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February 18, 2005

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTN: BOARD OF PATENT APPEALS AND INTERFERENCES

Re: Serial No. 10/055,637
Attorney's Docket No.: LAWR0021US

Sir:

Enclosed herewith is a Brief for Appellants, in triplicate.

No fee is required for this Brief since the Appeal Brief fee was paid at the time the previous Appeal Brief was filed.

Please charge any additional fees to Deposit Account No. 06-0735.

Respectfully

Alan H. Levine

AHL:gmt
Enclosures

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: MAIL STOP APPEAL BRIEF-PATENTS, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA DC, 22313-1450 ON THE DATE INDICATED BELOW.

NAME Anne N. Tufino

DATE February 18, 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:
SIEGLER et al.
For: **PEDESTRIAN TRAFFIC CONTROL DEVICE HAVING TAPE BELOW TOP OF POST**
Serial No. 10/055,637
Filed: January 23, 2002
Examiner: Michael P. Ferguson
Art Unit 3679

Mail Stop Appeal Brief-Patents
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P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

BRIEF FOR APPELLANTS

Real Party in Interest

The real party in interest herein is Appellants' assignee, Lawrence Metal Products, Inc., a New York corporation, having a principal place of business at 260 Spur Dr. South, Bay Shore, NY 11706.

Related Appeals and Interferences

There has been a previous appeal in this case. On July 16, 2003, all the claims in the application were finally rejected. A Notice of Appeal was filed on October 20, 2003, and an Appeal Brief was filed on December 17, 2003.

Thereafter, on March 15, 2004, a further office action was issued reopening prosecution and rejecting all claims on art not previously relied upon by the Examiner. A response was filed on May 5, 2004 in which claims were amended. On June 23, 2004, the claims were finally rejected on the basis of a previously applied reference in view of a newly-cited reference. On January 24, 2005 a response to the final rejection was filed (bearing a certificate of mailing date of December 20, 2004) along with a request to reinstate the appeal, and on or about February 16, 2005, an advisory action was issued stating that the response does not place the case in condition for allowance.

There are no related interferences.

Status of Claims

Claims 1-8 are pending in this application. All claims stand rejected, and are appealed herein. (In the summary of the June 23, 2004 office action, all the claims are said to be rejected, but in the Detailed Action, no reference is made to Claim 5.)

Status of Amendments

No amendment was filed subsequent to the second final rejection of June 23, 2004, from which this appeal is taken.

Summary of Claimed Subject Matter

This invention relates to pedestrian traffic control barriers commonly used by institutions serving the public, such as banks and airports. A typical use of such barriers is to organize people into lines as they wait for service by the next available teller, ticket agent, or the like.

Such traffic control barriers include a vertical post 20, 21 (Fig. 1), and a cassette 23, 24 mounted on the upper end of the post, the cassette incorporating a flexible tape 27 wound on a spool, the tape being extendible in a horizontal direction from the post. The tape is extended by pulling on its free end 28, causing the tape to unwind from a spool within the cassette against the force of a retractor spring tending to rotate the spool so as to rewind the tape. The free end 28 of the tape is attached to the upper end of another similar post.

This application is a continuation-in-part of Application Serial No. 09/335,572, filed June 18, 1999, now Patent No. 6,375,164, issued April 23, 2002. The issued patent covers, generally, a post carrying two cassettes, one 23 at the upper end of the post, and a second cassette 53 (Fig. 5) about midway between the upper and lower ends of the post. A second tape 32 (Fig. 1) can be drawn from the second cassette, between the two posts.

The invention covered by this application involves a post carrying a single cassette. Typically, in the case of a post having just one cassette, the cassette is mounted on the upper end of the post, which is usually about forty inches tall. However, under the Americans with Disability Act (ADA), the tape extending from the posts of pedestrian barriers of this type must be less than twenty seven inches from the floor. At this lower height, the tape can be detected by the visually impaired using a cane or guide dog.

It is undesirable, however, to make the posts this short (less than thirty inches tall) since at that height they are less noticeable by the general public, and hence are not as effective as a visual barrier. In addition, since signs are often mounted on top of at least some of the posts, it is important for the posts to be tall enough so that the signs they carry are readily observed without the need to crouch.

A pedestrian traffic control device which complies with the Americans with Disability Act is illustrated in Fig. 15. In this embodiment, two spaced-apart upright posts 120 and 121 are mounted on support bases 122. The posts may be slightly shorter than usual, say, thirty-six inches high. The posts are initially open at their upper ends, but in use are closed by caps 123 and 124 and do not accommodate cassettes similar to cassettes 23 and 24 within their upper ends.

A cassette (not shown), is carried within each post 120 and 121, each cassette being located below the top of its respective post.

At the location of the cassette, each post is provided with a slot, and tape 132 is shown extending from the cassette in post 120 to post 121. A pull 133 carried by the free end of tape 132 is used to secure the free end of the tape to the bracket of a cassette (not shown) mounted within post 121. A fragment of tape 134 is shown extending from the cassette in post 121 toward another post (not shown). Also, a fragment of a tape 135 is shown, this tape extending from the cassette of a previous post (not shown) in the series of posts, the pull 136 at the end of tape 135 securing the tape to post 120.

The cassettes are so arranged within the posts that both the upper and lower edges of tapes 132, 134, and 135 are spaced at least several inches from the upper end of the post, and the lower edges of the tapes are located less than twenty seven inches above the floor supporting bases 122. If desired, a sign holder 190 may be mounted on the top of selected posts, e.g., post 120, the holder carrying a sign 191 giving pedestrians appropriate information such as "Enter Here".

The relationship between the cassette within each of posts 120 and 121 is similar to the relationship of the second, or lower cassette, to each of posts 20 and 21 (Fig. 1). Thus, a one-piece post 120 is formed with a slot, like the slot 47 (Fig. 3), the slot being between the ends of the post, and both the upper and lower edges of the slot being spaced from the upper end of the post at least several inches. The cassette is fabricated so as to have an external diameter along its entire length which is smaller than the internal diameter of the post permitting the cassette to be lowered into the interior of the post to a level so that the free end 37a (Fig. 6) of the tape carried by the cassette can be extracted through slot 47.

A tube 50 (Figs. 3 and 4) is dropped into post 20 before the lower cassette is inserted into the post to serve as a locating support for the lower cassette until the lower cassette can be permanently secured to the post.

After the free end 37a of the tape is pulled through slot 47, a pull 133 (Fig. 15), similar to pull 33 (Figs. 1 and 10), is attached to the free end of the tape. The pull serves as a finger grip for the end of the tape, and as a means for attaching the end of the tape 132 to a post spaced from the post from which the tape is extracted. In addition, since the width of pull 133 is larger than that of slot 47, the pull prevents the retractor spring of the cassette from retracting the tape

completely into the post, and thereby maintains tension in the retractor spring.

Grounds of Rejection

At the top of Page 3 of the final rejection office action, the Examiner rejects claims 1, 2, 4, 7 and 8 as unpatentable over the British patent application in the name of Reading, in view of ADA Standards for Accessible Design. It is believed that the Examiner also intended to include Claims 3 and 6 as part of this rejection, since these two claims are also discussed in detail in Section 4 of the office action. It is noted that the Examiner has not specifically rejected Claim 5 (although as noted above the "Office Action Summary" states that claims 1-8 are rejected).

The Examiner has also objected to all the dependent claims, 2-6 and 8, on the ground that they begin with the word "A" rather than the word "The".

Argument

In rejecting Claim 1, in Section 4(a) of the office action, the Examiner, referring to the annotated Fig. 1 of Reading shown at the bottom of Page 4 of the office action (and reproduced below), points to slot A in the post 2 and describes "the slot A being spaced from both ends B, C of the post 2". In this the Examiner is mistaken. In fact, in the post 2 of Reading, slot A extends to the upper edge of the post 2, and therefore is not spaced from the upper end of the post.

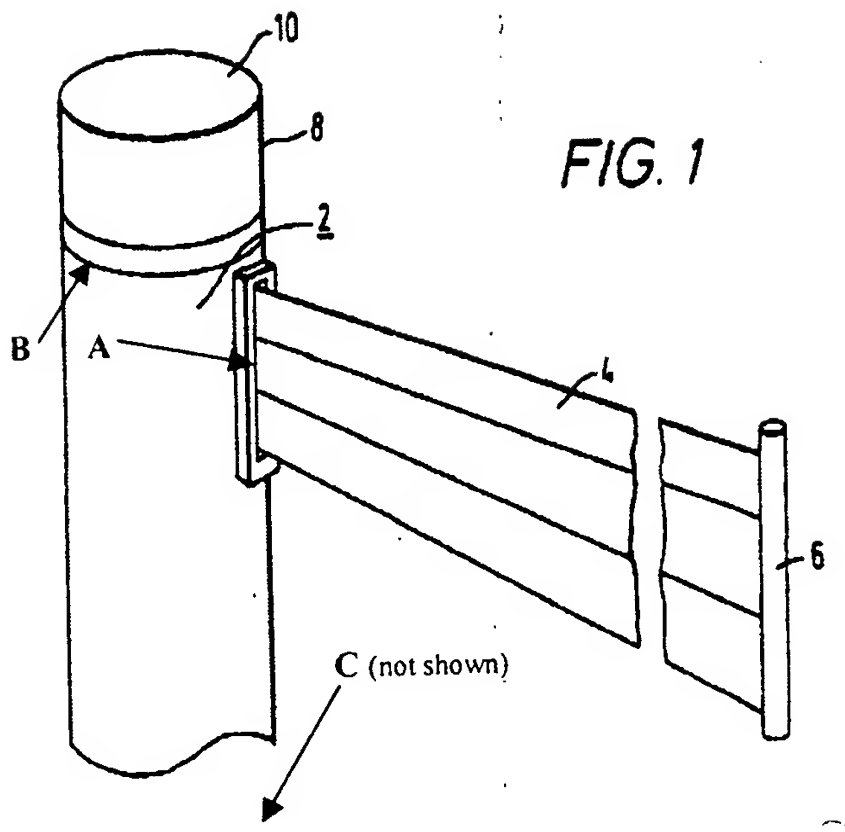


FIG. 1

Accompanying Appellants' response to the office action is a "Declaration of Ernest James Reading" one of the joint inventors of the Reading reference cited by the Examiner. Annexed to the three page Reading declaration are five photographs of the post to which the Reading citation is directed. The Reading declaration was entered by the Examiner, as indicated in Section 10 of the advisory action.

The Reading declaration, Paragraph 3, states that the slot in post 2, through which belt 4 extends, is not spaced from both

ends of the post. Reading states that the slot extends "to, and through, the upper edge of the post." The declaration points out that the slot being open at the upper end of the post is necessary to permit assembly of the reel, upon which the belt is wound, with the post. The reason is that the grip 6 on the end of the belt is larger than the width of the slot, and hence the grip cannot be passed through the slot. Consequently, the slot must be open at its upper end to permit the belt to enter the slot while the reel is inserted into the top of the post and the grip remains outside the post.

Photographs 3, 4, and 5 annexed to the Reading Declaration show the assembly of the reel, or cassette, with the post, as described in the Reading declaration. Moreover, photograph 2 shows the post with 2 slots at its upper end, each slot extending to and through the upper edge of the post.

Finally, the Reading declaration points out that, while Fig. 1 of the cited Reading application could be mistakenly interpreted as showing the slot being spaced from the upper end of the post, the drawing is a rough schematic and does not accurately reflect the product which was the subject of the British application. The location of the slot was not an important element of the invention covered by the British application, and therefore no particular attention was paid to the manner in which the relationship of the slot to the post was illustrated.

In the advisory action, the Examiner maintains the final rejection of all claims stating with reference to the Reading reference that "the drawings within a reference are good for what they show." According to the Examiner the Reading reference "clearly shows a slot being spaced from both ends of a post".

What the Examiner ignores is that, in reality, the Reading reference does not teach what the drawing appears to show. The reason is that the drawing is schematic and does not accurately reflect the product covered by the Reading application. Moreover, an inspection of the Reading drawing makes it clear that the grip 6 on the end of the belt is larger than the slot, so that the grip cannot fit through the slot. Hence, if the slot did not extend to the top of the post, the product would be inoperable since the cassette holding the wound belt (with grip 6 attached) could not be assembled with the post.

In addition, there is no discussion in the text of the Reading reference referring to the slot being spaced from both ends of the post, and there would be no reason to make the post in such a manner.

Thus, it is believed that the mere erroneous showing of the slot location in the Reading drawing, without more, is suffi-

cient to overcome the Reading declaration and attached exhibits which evidence the fact that the disclosure in the Reading reference does not show or suggest a slot spaced from both ends of the post.

In view of the above discussion, it is submitted that Claim 1 patentably distinguishes from Reading in view of ADA, as applied by the Examiner. Claim 1 calls for a slot in the post between its ends, "the slot being spaced from both ends of the post". Reading does not disclose a slot spaced from both ends of the post.

Claim 1 continues by calling for "both the upper and lower edges of the tape, when extended, being spaced from the upper end of the post at least several inches". Since the slot in the Reading post extends to the upper end of the post, it is clear, and may be seen from the photographs attached to the Reading Declaration, that when the cassette is inserted into the upper end of the post, the upper edge of the tape is very close to the upper end of the post, and certainly not several inches below the upper end of the post.

This being the case, there is no suggestion in the Reading reference to adjust the location of the tape, along the length of the post, to satisfy the requirements of ADA. The only way to accomplish this result would be to extend the slot of the Reading reference downwardly along the length of the post. Not

only is this alteration of the Reading post not suggested, but it would be detrimental, since extension of the slot would greatly weaken the post.

In view of these comments, it is believed clear that the combination of references relied upon by the Examiner does not show or suggest the subject matter of Claim 1.

Claims 2-6 are all dependent upon Claim 1, and therefore distinguish from the references for the reasons set forth above.

Method Claim 7 calls for "pulling the free end of the tape through the slot and thereafter attaching a finger pull to the free end of the tape". This sequence of steps is not described, or suggested, by the Reading reference. Paragraph 3 of the accompanying Reading Declaration, and photographs 3-5 annexed to that declaration, make it clear that the finger pull, or grip, on the end of the belt or tape is already attached to the end of the tape at the time the cassette is assembled with the post. This is permitted because in the Reading post, the slot extends to the upper end of the post. With the present invention the pull cannot be attached to the tape before insertion of the cassette into the post, since the slot is spaced from both ends of the post.

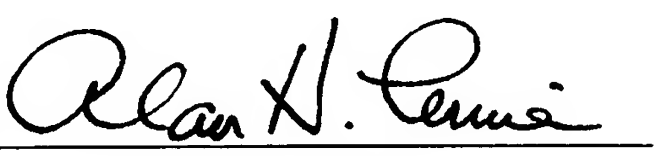
Claim 8 is dependent upon Claim 7 and therefore distinguishes from the references for the reasons just mentioned.

Each of the dependent Claims, 2-6 and 8, have been objected to because they begin with the word "A" rather than with the word "The". However, it is believed that dependent claims beginning with "A" rather than with "The" is acceptable claim drafting form. Attention is directed to the claims of appellants' Patent No. 6,375,164, of which the present application is a continuation-in-part, as well as references relied upon by the Examiner in earlier office actions, namely, the Oster and Falcon patents. The Examiner was asked to cite authority for the proposition that dependent claims must begin with "The" rather than with "A", but no such authority was forthcoming.

It is believed that upon further consideration the Board will find all the claims in this application allowable, and such action is therefore solicited.

Respectfully,

STEPHEN L. SIEGLER et al.

By 
Their attorney
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February 18, 2005

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NAME Lisa M. Lufino

DATE February 18, 2005

APPENDIX

Ser. No. 10/055,637

1. A pedestrian traffic control device, comprising:

a hollow, upright, one piece, post having an open upper end and a lower end,

at least one slot in the post between its ends, the slot being spaced from both ends of the post,

a cassette located within the post and between its ends, the cassette incorporating a tape wound on a spool, the tape being extendible from the cassette, through the slot in the post, in a direction generally perpendicular to the axis of the post, both the upper and lower edges of the tape, when extended, being spaced from the upper end of the post at least several inches, and

means for holding the cassette within the post.

2. A pedestrian traffic control device as defined in claim 1, wherein the post and cassette are both generally circular in cross-section, and the outer diameter of the cassette, along its entire axial length, is smaller than the internal diameter of the post, so that the cassette can be inserted into the open upper end of the post and moved to its location between the ends of the post.

3. A pedestrian traffic control device as defined in Claim 1, wherein the cassette is held within the post at a position such that the lower edge of the tape, when extended, is less than twenty seven inches above the floor supporting the post.

4. A pedestrian traffic control device as defined in claim 1 including means for supporting the cassette within the post in the region of the slot in the post.

5. A pedestrian traffic control device as defined in claim 4 wherein the support means includes a tube within the post having an upper end in the region of the lower end of the slot in the post, the cassette being seated upon the upper end of the tube.

6. A pedestrian traffic control device as defined in Claim 1 wherein no tape-holding cassette occupies the upper end of the post.

7. A method of assembling a pedestrian traffic control device, the device including a hollow post having an open upper end and a slot between and spaced from the post ends, both the upper and lower edges of the slot being spaced from the upper end of the post at least several inches, and a cassette incorporating a spool on which a tape is completely wound, the free end of the tape being exposed, the method including the steps of:

inserting the cassette into the open end of the post,

maneuvering the cassette along the length of the post until the free end of the tape is accessible through the slot in the post,

pulling the free end of the tape through the slot, and

thereafter attaching a finger pull to the free end of the tape exposed outside the post, the pull being sized large enough so that the free end of the tape, with pull attached, cannot be retracted into the post through the slot.

8. A method as defined in claim 7 wherein the tape-carrying spool is spring based in a direction tending to wind the tape on the spool, so that pulling the free end of the tape through the post slot adds tension to the spring.